

ENVIRONMENTAL QUALITY COUNCIL

December 4, 1998

Original Minutes with Attachments

COUNCIL MEMBERS PRESENT

Rep. Vicki Cocchiarella, Co-Chair
Sen. Ken Mesaros, Co-Chair
Rep. Haley Beaudry
Rep. Kim Gillan
Sen. Lorents Grosfield
Rep. Karl Ohs

Sen. Barry Stang
Rep. William Tash
Mr. Jerry Sorensen
Ms. Jeanne-Marie Souvigney
Mr. Gregory Tollefson

COUNCIL MEMBERS EXCUSED

Rep. George Heavy Runner
Sen. William Crismore
Sen. Vivian Brooke

Mr. Bill Snoddy
Ms. Julie Lapeyre
Sen. Bea McCarthy

STAFF MEMBERS PRESENT

Mr. Todd Everts
Ms. Kathleen Williams

Mr. Larry Mitchell
Ms. Mary Vandebosch

VISITORS' LIST

Attachment #1

COUNCIL ACTION

- Approved the minutes of the October 29 and 30, 1998, EQC meeting.
- Generally support funding of the Montana Cadastral Mapping Project.
- Adopted the revised findings and recommendations of the Growth Subcommittee.
- Adopted LC0475, LC0476, LC0477, LC0478, and LC0479.
- Support adding an amendment to any local option sales tax legislation to encourage local jurisdictions to utilize a portion of this tax for planning (growth policies) within the jurisdiction.
- Support asking for general fund money as an option for funding local planning.
- Adopted the Compliance and Enforcement Report to the 56th Legislature.
- Approved the minutes of the October 29, 1998 Water Policy Subcommittee meeting.
- Approved the minutes of the October 29, 1998 Growth Subcommittee meeting.

I CALL TO ORDER AND ROLL CALL

CO-CHAIR COCCHIARELLA called the meeting to order at 9:00 a.m. Roll call was noted; REP. HEAVY RUNNER, MR. SNODDY, SEN. CRISMORE, MS. LAPEYRE, SEN. BROOKE, and SEN. MCCARTHY were excused. (**Attachment #2.**)

II ADOPTION OF MINUTES

Motion/Vote: REP. OHS MOVED THAT THE MINUTES OF THE OCTOBER 29 and 30, 1998 EQC MEETING BE APPROVED AS WRITTEN. The motion carried unanimously.

III ADMINISTRATIVE MATTERS

A. EQC Committee Budget

MR. EVERTS reported that the budget was on track and expenses for the next meeting in late May or June would be covered.

B. Session Staffing

MR. EVERTS explained that for the upcoming Legislative Session, the Senate Natural Resources Committee will be staffed by MR. MITCHELL; the Senate Local Government Committee will be staffed by MS. VANDENBOSCH; the House Natural Resources Committee will be staffed by MS. WILLIAMS; and the House Agriculture Committee will be staffed by MR. EVERTS.

CO-CHAIR COCCHIARELLA clarified that it had been brought to her attention that Director Simonich had notified the EQC staff regarding recent changes being made at the Department of Environmental Quality (DEQ) and that the EQC had been invited to participate in the process.

IV GENERALLY REVISING ENVIRONMENTAL ENFORCEMENT LAWS LEGISLATION (LC0290) AND DEQ'S ENFORCEMENT AND COMPLIANCE MANUAL

John Arrigo, Department of Environmental Quality (DEQ), provided the Council with a draft copy of the "Enforcement Response Manual", **Exhibit 1**. He remarked that when the Enforcement Division of DEQ was created they decided to have all citizen complaints channeled through a complaint clearinghouse. Over the past two years, they have received over 2,000 complaints and about 40% did not involve a violation. Complaints that resulted in actual violations were followed and, if necessary, enforcement action was taken. They have minimized and standardized their forms to provide accountability and tracking.

If an enforcement request is disapproved, this is documented in writing and sent back to the regulatory bureau for revision. Once the Director has approved initiation of an enforcement action, the Enforcement Division begins to develop the case. Their focus is on administrative enforcement actions. The Legislature has provided administrative penalty authority to the department in a variety of laws and the department now has the authority to issue orders and assess penalties. Their technical staff works with the regulatory bureaus to draft the administrative orders. All orders that leave the department are approved by an attorney. The Enforcement Division is responsible for calculating penalties. The order is reviewed by the case attorney and signed by the Director.

The Case Management Bureau Chief works with the regulatory bureau and the attorney to develop options for settlement. Orders may require long-term compliance activities which are tracked by the department. If settlement negotiations are not successful, an appeal or contested case process is undertaken.

Their enforcement agreement with the EPA provides that the department specify timely and appropriate enforcement. This is accomplished by classifying violations. A significant violation calls for certain actions to be taken. Within 45 days of validating that a violation has occurred, the department needs to inform the violator in order to document the violation and instruct the violator on how to arrive at compliance. If compliance is not reached in the next 45 days, the regulatory bureau submits an enforcement request and an enforcement action is initiated.

MR. TOLLEFSON asked for further information on the department's agreements with the EPA. **Mr. Arrigo** explained that there were two types of agreement with the EPA. The delegation agreement involves the department showing that they have a program in place to administer the laws on behalf of the EPA. The enforcement agreement involves communicating with the EPA and specifying timely and appropriate criteria and also includes the adoption of EPA's definition of significant non-compliances. The reporting requirements are specified in the Performance Partnership Agreement with the EPA.

Jan Sensibaugh, DEQ, added that they are working toward developing meaningful indicators in the Performance Partnership Agreement.

MR. TOLLEFSON stated that if there is a reporting requirement related to enforcement activities that is similar to the requirements requested by the EQC, it is important to blend these activities.

MS. SOUVIGNEY questioned whether the department used a standardized reporting form. **Mr. Arrigo** explained that each program had their own database to track information.

Mr. Arrigo provided a copy of the outline of the environmental enforcement bill, **Exhibit 2**. He remarked that they discovered that each individual law contained specific procedures and authorities for taking actions. The enforcement procedures in federal programs follow EPA procedures. This legislation amends 15 separate environmental laws by deleting or repealing enforcement sections and cross references to the new enforcement law. Penalties will not be increased and penalty authority will not be added to any law. New Section 7 includes the standard enforcement tools. When the department has reason to believe a violation has occurred, it may issue a notice of violation to the alleged violator. This is a formal enforcement document. An emergency order is issued if there is an imminent threat to human health and the environment. A corrective action order requires the violator to take action to remedy a violation. This may be appealed to the district court. An administrative penalty order may be issued by the department. Maximum penalty amounts specified in existing statutes remain the same. Each day of violation constitutes a separate violation and the statute of limitations is three years. The administrative penalty order may be appealed to the Board of Environmental Review or the district court.

V DEQ MEPA GUIDELINES

Tom Ellerhoff, DEQ, referred to the memo he had provided Council members updating the MEPA Guidelines process, **Exhibit 3**, and explained that the outline for this project is under development.

MS. SOUVIGNEY noted that the information was similar to the document produced by the EQC. **Mr. Ellerhoff** explained that this was done for consistency. Several guidance documents had been enhanced with specifics relevant to the DEQ.

VI DNRC MONTANA ENVIRONMENTAL POLICY ACT LEGISLATION (LC082)

Bud Clinch, DNRC Director, explained that the draft legislation, **Exhibit 4**, proposed changes in three different areas. Two changes are in Title 75 and one is in Title 77. He referred to the changes found at 75-1-201(d). The purpose of this language is to make it clear that the transfer of ownership does not trigger a MEPA document. Several years ago the department was involved with the transfer of a lease that became controversial. This involved the transfer of a grazing lease. After the transfer of the lease, the new owner decided to have sheep graze on the land. Sportsmen were concerned that the utilization of domestic sheep would cause the transfer of a disease to the big horn sheep population. MEPA litigation followed and the DNRC prevailed at the district court level, but the case was overturned by the Supreme Court. The DNRC was ordered to prepare an EIS on the transfer of the assignment of the lease. The Supreme Court decision included that the DSL must complete an EIS to comprehensively review the environmental impacts resulting from the change of use adjacent to the big horn sheep. Justice Gray's dissent stated that the opinion lacked clarity concerning which MEPA statutes or regulations the court determined that the DSL actually violated.

A strict interpretation of the Supreme Court decision could be problematic in regard to leasing activities. If a farmer who was a lessee decided to change from the historical use of barley and elected to plant another crop, one could allege that a MEPA review was needed for the change. The department believes that the transfer of ownership does not trigger a MEPA review.

Proposed subsection (3) makes it clear that the person who challenges the adequacy of an environmental document prepared by an agency must give all relevant information to the agency at the administrative stage for the agency to use in complying with MEPA. If this is not done, the person may not use this information in court proceedings under the DNRC legislative proposal.

The department is involved in hundreds of MEPA activities. The MEPA process may take 18 to 24 months or longer and includes extensive public comment and meetings. Individuals who were involved in early negotiations end up bringing litigation which includes a new array of issues which have not been discussed prior to the litigation. The proposed legislation should force these individuals to be engaged in negotiations so that issues can be resolved and decision makers can be well informed.

MR. TOLLEFSON raised a concern that it be made clear that environmental review is not precluded. **Tom Butler, DNRC**, explained that language at the end of (d) stated “or unless otherwise provided by law.” If there is an impact that is social or economic in character, it would be categorically excluded from MEPA review at the present time. The new language will clarify and codify the Supreme Court’s ruling where they also agreed that a mere transfer or change in ownership by itself would not trigger MEPA review.

MR. TOLLEFSON raised an additional concern regarding a court not being able to consider an issue or evidence that was not first presented to the agency for the agency’s consideration prior to the agency’s decision. He added that this could close the door on people of good will who discover something at a late stage in the process. **Director Clinch** stated that the citizens who are genuinely interested are actively involved throughout the process. If an issue is brought to the agency which poses a significant impact, the department would maintain the discretion to change the proposed action and use a supplemental action.

MS. SOUVIGNEY questioned whether the case that prompted this legislation included an EA that evaluated use or impact associated with sheep grazing, or any other type of grazing, besides cattle. **Mr. Butler** explained that there was no proposed state action. The Supreme Court ruling does not give an exact definition of state action. The court stated that whenever the department becomes aware of a change in historical lease conditions which could significantly impact the environment, the state has the

obligation to prepare an EIS. In that case, the lessee was proposing to run more sheep to remove knapweed from his state-leased land.

MS. SOUVIGNEY remarked that this was less an issue of transfer of ownership than an issue about a change of use and whether that change of use and associated impact will be evaluated. If it wasn't evaluated in the first EA and there is a change of use that could have different or new impacts, this legislation would relieve the state of any obligation of evaluating those new impacts. This legislation could force the DNRC to evaluate all potential uses and impacts at the time of issuing the initial lease if they will be precluded from doing so with a change of use later.

Mr. Butler explained that the Land Board has adopted a policy on sheep grazing near critical sheep habitat. Also, the legislation does not propose to change the responsibility of the Board and the department to review the impacts when proposing to issue a lease. The legislation clarifies that ongoing activities which have been previously reviewed will not need to be constantly reviewed. MEPA's purpose is prospective and involves looking at the environmental impacts resulting from state proposed actions.

Janet Ellis, Montana Audubon, asked why the department didn't consider a programmatic and more public process for change of use classifications. **Director Clinch** remarked that the legislative process is an open and public forum.

VII ENVIRONMENTAL IMPACT STATEMENT ASSESSMENT FEES AND CI-75

Greg Petesch, Legislative Services Division, remarked that he had been asked how EIS and EA projects would function under CI-75. He added that he has reviewed the statutes and agency rules and believes that the procedures will still work because the fee schedules were set through rules as percentages of the project costs. All agencies have adopted the Model Rule. If there is a requirement that the amounts that trigger the fees were to change, this would need to be accomplished statutorily and would need to be submitted to a vote under Article VIII, Section 17. It would be necessary to have legislation to place the fee in statute and submit this to the electorate. Each fee needs to be analyzed separately to determine whether it is subject to the electorate approval requirement.

SEN. GROSFIELD remarked that the fees associated with an EIS are set to cover the costs involved but these costs would be affected by inflation. **Mr. Petesch** clarified that the fee schedules include dollar amounts of anticipated activity and the fees are arrived at as percentages of these dollar amounts. As long as an accurate determination of the amount of the project is arrived at, the schedules could be used.

CO-CHAIR COCCHIARELLA questioned the situation wherein an EIS included additional work. **Mr. Petesch** explained that if the EIS included something which was not statutorily authorized to be included, this would be an expansion of the base that is subject to the fee. The expansion of the base would need to be approved by the electorate.

CO-CHAIR COCCHIARELLA questioned whether the DEQ had considered the impacts of CI-75 on their proposed legislation. **Director Simonich** remarked that this mostly included penalties as opposed to fees. Their interpretation is that penalties are not considered fees and were not intended to be covered by CI-75. They are requesting additional penalty authority in two separate bills.

Mr. Petesch remarked that Article VIII, Section 17 exempts civil fines. Most agencies are taking the position that administratively imposed penalties fall within the purview of the term “civil fine”. A judicial determination may need to be made to determine what constitutes a civil fine. He believes that as long as the civil amount is imposed pursuant to the Montana Administrative Procedure Act which includes a review process, penalties could be treated as civil fines.

REP. OHS inquired as to the increase in legislation necessary for separating fees from legislation. **Mr. Petesch** remarked that one proposed bill became nine bills because it included a new licensing exam, renewal fees for inspectors, etc. Formerly, this would have been accomplished by administrative rule. There is proposed legislation that would revise election laws. This includes revising the unlawful delegations of authority to agencies to establish fees.

REP. BEAUDRY remarked that if the base stayed the same and the fees were a percentage of costs, there should be no problems. **Mr. Petesch** remarked that the Department of Revenue made the conclusion that the rule implementing the statute provides that the price charged for liquor from the warehouse is a 40% increase of the base cost of the liquor supplied by the distiller. A vote should not be necessary because an agency should not have to submit doing nothing to the electorate for a vote. If the statute provided that the agency shall charge a fee commensurate with the agency’s costs, and the cost increases due to inflation factors are built into the budget bill, the agency cannot increase fees to cover the increased costs absent submitting the fee increase to the voters.

MR. EVERTS questioned the situation where a permitting statute is changed and the tax base is increased, how would this affect the MEPA fee statutes. **Mr. Petesch** believed that the permit base change would need to be submitted for a vote and MEPA should follow.

CO-CHAIR COCCHIARELLA questioned the liability for legislators from CI-75. **Mr. Petesch** believed that legislators were immune from suit. Article VII, Section 17 prohibits immunity from suit being

granted pursuant to Article II, Section 18 of the Constitution. The speech and debate clause immunity is still contained in the legislative article. Under decisions from other jurisdictions, speech and debate clause immunity extends to all legislative acts.

Anne Hedges, MEIC, remarked that Article VIII, Section 17 stated that it took precedence over everything else in the Constitution. **Mr. Petesch** stated that that was true to the extent of conflict. He did not believe that the speech and debate clause was a conflict. Article VIII, Section 17 specifically precludes the Legislature from granting immunity to people pursuant to the 2/3rds vote authorized pursuant to Article II, Section 18. The speech and debate clause immunity contained in the legislative article is self-executing. As long as a legislative act is involved, legislators should be protected.

VIII EQC GROWTH RECOMMENDATIONS PUBLIC COMMENT AND FINAL ADOPTION

MR. SORENSEN reviewed the draft findings and recommendations from the “Planning for Growth in Montana” report, **Exhibit 5**. He noted that following several growth forums which have recently been held, some adjustments have made to the findings and recommendations. The growth subcommittee initially decided to attempt to shift the emphasis of growth and planning in Montana from the historical battleground of subdivision review to the planning side of the law and to encourage local communities to be more proactive in planning.

The EQC is proposing to change the terms “master plan” and “comprehensive plan” to “growth policy.” This was being done to help people think about planning in terms of the future of their communities. Another proposal is to amend the Planning Enabling Act to provide for minimum objectives that communities would need to include in a growth plan. This does not preclude the other items currently allowed by law. The growth policy needs to be updated every five years.

An amendment has been suggested that any urban renewal plans need to be consistent with the growth policy. LC0476 allows for an expedited review of subdivisions if the governing body has adopted a growth policy and zoning regulations which address the public interest criteria now contained in the subdivision law. This is an incentive for people to work with the local government to give more predictability and expedite subdivision review. Plans adopted before October of 1999 would not be affected. The local governments have until October of the year 2000 to adopt zoning regulations that would be based on a master plan that does not come under the growth policy legislation.

The EQC proposes that a planning board may waive the requirement to review minor subdivisions. This would be at their discretion, and the proposed subdivisions would be reviewed by staff and the governing body. This should allow for more time for planning.

Funding is essential to help local governments plan. The EQC recommends that the Legislature appropriate \$1 million a year over the next biennium through a grant process. On average, master plans cost approximately \$50,000. The local jurisdiction would need to match 50% of the cost of developing or implementing a growth policy. The first priority for a source of funding would be a reallocation of the bed tax. If this is not successful, they would like to review the funding opportunities within the coal tax fund. They also recommend that the Legislature authorize some local funding authority.

The GIS system and cadastral mapping project is essential to the state. This would provide parcel mapping in an electronic format for each county and would provide a tracking system to show how parcels are being created in the jurisdiction.

CO-CHAIR COCCHIARELLA commended the Growth Subcommittee on the hard work and consensus building which was involved. She specifically thanked the public members for their insight and extra effort.

REP. GILLAN pointed out that she agreed in theory with most of the findings and recommendations. She had reservations about changing the title of the document to growth policy.

SEN. GROSFIELD asked MR. EVERTS to address the implications of changing the language from “master plan” to “growth policy.” MR. EVERTS provided a copy of a memo he had prepared on the legal impact of changing the terms “comprehensive development plan,” “master plan” or “comprehensive plan” to “growth policy”, **Exhibit 6**.

MR. EVERTS stated that the first question was whether the changes in the terms affect prior rights and obligations. He believed that it would not. There is a savings clause in the bill that protects the duties, rights, and obligations that were in place before the effective date of enactment.

The second question was how a judge or particular court would view this change in light of prior court cases here in Montana and across the nation. The conclusion is that given the structure of the definition in LC0475, growth policy would mean the same and be synonymous with the three other terms. A court would likely use past case precedent to address the issue. A court would also likely look past the name change and go to the specifics in the statute to see if there were changes in the content requirements. There have been changes in the content requirements but these changes are similar to master plans across the United States.

REP. TASH questioned the legal acceptance of cadastral mapping. SEN. GROSFIELD stated that from a planning perspective, cadastral mapping could be a tremendous tool. He believed it would be some time before cadastral mapping could be used for legal purposes.

MR. SORENSEN remarked that under the cadastral mapping program, they arrived at several options as shown on page 9 of the report (Exhibit 4). The first option is to recommend that the Legislature recommend full funding for the project which amounts to \$176,000 per fiscal year. The second option is to generally support funding. The third option would be to support the executive budget request.

SEN. GROSFIELD questioned the amount included in the Executive Budget. MS. VANDENBOSCH explained that the narrative asked for \$69,000 per year but an error was made in the calculation which resulted in the dollar amount requested to be \$29,000 per year.

MR. SORENSEN explained that the program is seeking private funding as well. A strong support at the state level would help private funding efforts. The program is hoping to receive 50% of their funding from the private sector, 25% from the federal government and the remaining 25% from the state government. The total budget is approximately \$900,000 a year and the total project cost is \$4 million.

REP. TASH questioned whether the private sector would be willing to contribute 50% of the funding. **Steve Snezek, Montana Association of Realtors**, stated that initially they have decided not to contribute to the project. The majority of their members live in the larger jurisdictions and a lot of this work has already been completed. It would be necessary for other major players to contribute before they reconsidered their earlier decision.

REP. OHS stated that there would be emphasis on economic development this legislative session. He added that the state has a lot of needs and there is a small pot of money.

SEN. GROSFIELD questioned whether the \$750,000 of federal funding available required a state matching amount. He also questioned whether the project could be completed by the end of the next biennium. MS. VANDENBOSCH stated that the Department of Administration did not want to predict a date of completion because the progress of the project was dependent on the amount of funds available.

Motion/Vote: MR. SORENSEN MOVED THAT THE EQC GENERALLY SUPPORT FUNDING OF THE MONTANA CADASTRAL MAPPING PROJECT. The motion carried unanimously.

Motion/Vote: MR. TOLLEFSON MOVED TO ADOPT THE FINDINGS AND RECOMMENDATIONS OF THE GROWTH SUBCOMMITTEE. The motion carried with REP. GILLAN voting “no”.

- ▶ The Council recessed for lunch and reconvened at 1:15 p.m.
- ▶ **EOC GROWTH RECOMMENDATIONS PUBLIC COMMENT AND FINAL ADOPTION**
- CONTINUED

MR. SORENSEN asked if the time frame for the Cadastral Mapping Project was tied to the funding.

Stu Kirkpatrick, Cadastral Mapping Program, explained that the proposed budget would allow the project to be completed within four years, **Exhibit 7**. Deviation from the budget will slow the progress. His sense is that if the state portion of the funding would decrease, the U.S. Department of Interior would see that action as a decreased commitment from the state and may decrease their commitment to the project as well. The commitment from the federal government for FY 1999 was \$750,000 from the Department of the Interior. Of this amount, a certain percentage is taken as an administrative fee which may be 10 percent to 20 percent. The regional and state BLM has three projects they would like to see accomplished in the state with a portion of these funds. One project is to investigate mining claims and expedite the information into their base public land survey. Another project is to establish a web internet database of survey control points. The third project is to investigate a partnership with the Forest Service to further expedite their collection of the public land survey system. This may take \$100,000 to complete. This would leave approximately \$500,000 for FY 1999. There are no commitments for the year 2000 or 2001. It is known to the federal government that they will be back asking for funds. Sen. Burns has been helpful with this project.

CO-CHAIR MESAROS questioned the amount of money that had been provided by the private sector.

Mr. Kirkpatrick stated that this amounted to approximately \$110,000 per year. They have commitments from both the Montana Power Company and Burlington Northern for \$50,000 a year from each entity for four years. There is also a commitment from MDU for \$10,000 a year and Williston Basin for \$5,000 a year. This is less than the projected 50% portion of the project they initially envisioned. The Department of Revenue has made large computer purchases and has trained eight to ten of their employees.

- ▶ **Review of Proposed Legislation**
- ▶ **LC0475 - Exhibit 8**

MR. SORENSEN remarked that this legislation includes the recommendations of the Council. On pages 6 and 7 of the bill the term “master plan” is changed to “growth policy” and the minimum requirements necessary for a plan are addressed.

SEN. GROSFIELD suggested that instead of stating that local jurisdictions needed to revise their policies every five years, this should state that they needed to review and, if necessary, revise. Some jurisdictions may not need to revise their policies that often. The Council agreed to this change.

Motion/Vote: MR. SORENSEN MOVED TO ADOPT LC0475. The motion carried unanimously.

► **LC0476 - Exhibit 9**

MR. SORENSEN explained that this bill will be combined into LC0475. This legislation allows for some exemption from the public interest criteria for review of subdivisions provided that a community meets the minimum requirements of the growth policy and has addressed the public interest criteria in those planning processes. The intent of the bill is to provide some incentive for landowners and developers to work at the planning side of the law. This is not mandatory, but is an option that local jurisdictions may take.

Motion/Vote: MR. SORENSEN MOVED TO ADOPT LC0476. The motion carried unanimously.

MR. SORENSEN stated that the Subcommittee had discussed expedited review for minor subdivisions. He proposed that this change be added to LC0476. This would allow minor subdivisions, land divisions of five or fewer parcels, to have an expedited review if there was a growth policy and zoning regulations were adopted. This would allow the requirement for holding a public hearing, preparing an EIS and the public interest criteria to be waived. This is another incentive to help with subdivision review if some of the work is done on the planning side, **Exhibit 10**.

Motion: MR. SORENSEN MOVED THE ABOVE AMENDMENT TO LC0476.

Discussion:

REP. GILLAN raised a concern with anything that diminished the ability of Montanans to have an influence on their current property values and quality of living. These issues were discussed over many months and this change was not included in the draft legislation.

MR. SORENSEN stated that the omission was an oversight. He added that minor subdivisions, under current law, do not require a public hearing. This is consistent with existing law.

Vote: The motion carried with REP. GILLAN voting “no”.

► **LC0477 - Exhibit 11**

MR. SORENSEN explained that this legislation involved municipal zoning and would include changing the thresholds to protest and override zoning changes. This included that a 40% protest would need a three-fifths majority of the council to overturn the zoning change.

Motion/Vote: MR. SORENSEN MOVED THE ADOPTION OF LC0477. The motion carried unanimously.

► **LC0478 - Exhibit -12**

MR. SORENSEN stated that this legislation would authorize governments, counties, and cities to work together and would allow the counties to give monies to the city to expand and improve infrastructure.

Motion/Vote: MR. SORENSEN MOVED THE ADOPTION OF LC0478. The motion carried unanimously.

► **LC0479 - Exhibit 13**

MS. VANDENBOSCH explained that the legislation would appropriate funds from the accommodations tax, which is commonly referred to as the bed tax. The proceeds from that tax are statutorily appropriated. To use money from that revenue source in a different manner requires amending the law. The most significant section of this proposed legislation is found on page 3, (d) which states that 67.5% of this tax goes to the Department of Commerce. This legislation would provide that \$1 million per year of that amount must be given in the form of grants to cities, towns, counties, and planning boards for the development and implementation of growth policies. Section 2 states that the grant could be up to 50% of the eligible costs or \$25,000, whichever is less. A growth policy needs to be developed that meets all the requirements established in LC0475 as it amends 76-1-601 or they can use the money to carry out specific implementation activities identified in the adopted growth policy. They are allowed to use in-kind contributions to match the grant amount. Subsection (c) provides that the activity needs to be completed within one year of award of the grant. Subsection (5) provides that the department may adopt rules, if necessary, to administer this section. Section 5 states that this act is void unless LC0475 is passed and approved and it includes a section that amends 76-1-601, the section that deals with the minimum content requirements.

Motion: MR. SORENSEN MOVED THE ADOPTION OF LC0479.

Discussion:

REP. TASH questioned how the eligibility of local government entities would be determined. MR. SORENSEN explained that they would apply to the Department of Commerce for grant money for developing a growth policy plan and/or implementation.

SEN. STANG opposed the recommendation. He is a member of the Bed Tax Futures Subcommittee and remarked that the Subcommittee has spent a lot of time during the past two years on restructuring plans. The bed tax was implemented for a specific reason and they still believe that that reason is sound. The Subcommittee recommended not to raise the bed tax and considered looking into a local option sales tax. They are more in support of a local option sales tax.

SEN. GROSFIELD stated that the Bed Tax Futures Subcommittee has not recommended much change. The bed tax is paid by citizens, not the tourism or accommodations industry. A local option sales tax is a legitimate suggestion. He added that there seems to be a direct relationship between tourism advertising and local growth problems.

REP. OHS stated that the bed tax has a lot of support from the tourism or accommodations industry.

CO-CHAIR COCCHIARELLA suggested an amendment that would include other sources of funding.

MR. SORENSEN stated that without the funding the other legislation is meaningless. He believed that the local option sales tax would be problematic because it would involve people voting to tax themselves. He would consider some reallocation of coal trust fund interest.

CO-CHAIR COCCHIARELLA remarked that a local option sales tax would not work because the places that passed the tax would be paying for a statewide program.

SEN. GROSFIELD commented that there was a way to get at the coal trust fund without going to the General Fund. The Coal Tax Fund has 8.36% of the interest set aside and part of this now goes to planning.

MS. VANDENBOSCH remarked that the Department of Commerce received \$200,000 per year for county planning grants.

Vote: The motion to adopt LC0479 passed 7 to 2.

Motion: SEN. GROSFIELD MOVED THAT THE EQC SUPPORT SEEKING AN AMENDMENT TO ANY LOCAL OPTION SALES TAX BILL TO INCLUDE A PORTION OF THE REVENUE TO BE MADE AVAILABLE TO LOCAL PLANNING WITHIN THE JURISDICTION.

SEN. STANG remarked that the local option sales tax would be patterned after the resort tax. This would include a proclamation as to what will be taxed and where the money will be spent. He believed that most communities would authorize use of these funds for planning.

Substitute Motion: SEN. GROSFIELD AMENDED THE MOTION TO ENCOURAGE LOCAL JURISDICTIONS TO UTILIZE A PORTION OF THE LOCAL OPTION SALES TAX FOR ADEQUATE PLANNING WITHIN THE JURISDICTION. The motion carried unanimously.

Motion: MR. SORENSEN MOVED TO PROVIDE FOR BACK UP FUNDING OF LC0479 BY USING THE 8.36% INTEREST SET ASIDE OF THE COAL TAX FUND.

SEN. GROSFIELD stated that he would rather encourage local jurisdictions to apply for the funds. He did not want to change the allocation. This will amount to \$5.4 million in the next biennium.

MS. WILLIAMS stated that this was the 223 account. Individuals come in with appropriation requests and the Appropriations Committee makes those decisions.

REP. OHS stated that the 223 money included conservation districts, TMDL legislation, etc.

Vote: The motion failed.

Motion/Vote: MR. SORENSEN MOVED THAT THE EQC ASK FOR ADDITIONAL FUNDING FOR LOCAL PLANNING FROM THE GENERAL FUND. The motion carried unanimously.

► **Sponsor assignments for proposed legislation.**

The following sponsor assignments were made:

LC0479 - REP. GILLAN will be asked to sponsor this legislation.

LC0478 - SEN. GROSFIELD

LC0477 - SEN. STANG

LC0476 and LC0475 - SEN. STANG

IX EQC WATER POLICY AND GROWTH LEGISLATION - SELECTION OF SPONSORS

MS. WILLIAMS stated that she received comments and changes from the DEQ on LC0413, **Exhibit 14**. She added that the changes would basically clarify technical terms.

Motion/Vote: MR. TOLLEFSON MOVED THAT THE CHANGES BE INCORPORATED INTO LC0413. The motion carried unanimously.

SEN. MCCARTHY will sponsor this legislation.

LC 0414. MS. WILLIAMS explained that this legislation extends the Department of Fish, Wildlife and Parks instream flow program. CO-CHAIR MESAROS will sponsor this legislation.

LC0412 - This legislation encourages state agencies to adopt best management practices. The Montana Logging Association has suggested changes to accentuate road construction and maintenance, **Exhibit 15**. They also wanted a reporting component so that state agencies would be asked to report to the EQC on their BMP development and implementation.

Motion/Vote: REP. TASH MOVED TO INCLUDE THE CHANGES SUGGESTED BY THE MONTANA LOGGING ASSOCIATION. The motion carried unanimously.

REP. OHS will sponsor LC0412. CO-CHAIR COCCHIARELLA will be the Senate sponsor of this legislation.

X HOUSE BILL 132 ENFORCEMENT AND COMPLIANCE SUMMARY REPORT **ADOPTION**

MS. WILLIAMS remarked that a working draft of the "Compliance with and Enforcement of Montana's Natural Resource and Environmental Laws", **Exhibit 16**, had been mailed to Council members. She stated that all three agency reports would be attached to this document as well as the information from the Department of Fish, Wildlife and Parks. Pages 3 through 5 include all the recommendations from the HJR 10 report. Pages 6 and 7 describe the Council actions. Pages 8 through 17 provide a series of observations by topic. Pages 18 and 19 include the Council findings and recommendations.

MR. TOLLEFSON asked to add language to the report, **Exhibit 17**. This would develop some substantive ways to measure the condition of the resource as part of the reporting process. Eventually the reporting process should be intertwined with the indicators project that the Council will be visiting from time to time.

REP. TASH did not object to the additional language as long as it did not interfere with state primacy.

MR. TOLLEFSON stated that the intent is not to affect the oversight structure either way but simply to take advantage of the opportunity of an information gathering tool.

Mr. Arrigo stated that they did not have any problem with the additional language. He added that the Performance Partnership Agreements with the EPA would only apply to the Department of Agriculture and the Department of Environmental Quality. The Department of Natural Resources and the Department of Fish, Wildlife, and Parks do not have similar agreements.

Motion/Vote: MR. TOLLEFSON MOVED TO ACCEPT THE REPORT WITH THE PROPOSED ADDITIONAL LANGUAGE. The motion carried unanimously.

XI UPDATE ON INTERIM COMMITTEE REORGANIZATION LEGISLATIVE PROPOSAL

MR. EVERTS stated that the Legislative Council adopted the interim committee restructuring bill. The EQC responsibilities would be expanded in that it would have formal rule making overview authority. The three agencies the Council would oversee would include the Department of Fish, Wildlife and Parks, the Department of Natural Resources and Conservation, and the Department of Environmental Quality.

XII THE EQC NOW AND IN THE FUTURE - A PARTICIPANT DISCUSSION

CO-CHAIR COCCHIARELLA stated that the number of Council members includes six members from the Senate - three from each party, six members from the House - three from each party, and four public members.

REP. TASH suggested that this remain the same.

MR. TOLLEFSON stated that current Council members have been spread so thin that they have been unable to become engaged in what the other half of the Council was doing. He remarked that the attendance of legislative members has been light this interim.

The Council agreed to leave the allocation of members as it presently stands.

CO-CHAIR COCCHIARELLA asked if the members were interested in changing the number of terms a member is able to serve on the Council. Currently this is set at three terms or six years.

SEN. GROSFIELD suggested this be changed to two terms or four years.

CO-CHAIR COCCHIARELLA further questioned whether members should be allowed to serve a longer term if they moved from one house to another.

SEN. GROSFIELD commented that the statute stated that in no case shall a member serve more than six years.

SEN. STANG remarked that the term should be left at three terms. This will allow for a rotation process. CO-CHAIR COCCHIARELLA asked for comments regarding the use of co-chairs to guide the Council. The Council generally agreed that it worked well this interim but personality differences could cause problems in the future. The Council believed it would be best for each EQC to make that individual determination.

MR. TOLLEFSON added that the leadership should be drawn from the legislative members.

SEN. GROSFIELD remarked that natural resource issues can be very contentious. The CI-75 issue involved a lot of misinformation from both sides. The EQC is a bipartisan group that is objective and accomplishes most of its action by consensus. This provides a level of credibility. He recalled a nonpartisan presentation of factual issues put on by MSU. This was important public information. Issues cannot be explained in sound bites. He suggested that the EQC consider this role and provide objective information in a timely manner.

MR. TOLLEFSON questioned whether this would be primarily the responsibility of the staff. SEN. GROSFIELD stated that it would but only at the direction of the EQC.

MR. TOLLEFSON stated that the EQC has always had the option of providing encouragement and a forum for someone to present this type of information.

REP. TASH stated that the MEPA indicator report was very successful in this area.

CO-CHAIR COCCHIARELLA suggested that a recommendation be made to the next EQC to leave an allocation of time and commitment for current controversies.

MR. EVERTS stated that his understanding was that the EQC would respond to an issue by providing nonpartisan information in a packet or some other form that is blessed by the Council.

MR. SORENSEN was skeptical of bringing in current issues. He referred to the Creston Gravel Pit operation and stated that he would be concerned if the EQC became the sounding board for contentious issues.

REP. BEAUDRY stated that the generation of nonpartisan factual information is very important to the people in this state.

The Council agreed to recommend this action to the next EQC.

CO-CHAIR MESAROS asked the Council for feedback regarding holding Council meetings outside of Helena. REP. TASH stated that the people in Dillon felt that it was very useful for state government to see how regulations were applied.

SEN. GROSFIELD stated that it was very healthy for the people in these communities as well as the EQC members.

The Council agreed to make this a recommendation to the next EQC.

XIII OTHER BUSINESS

Motion/Vote: REP. TASH MOVED APPROVAL OF THE MINUTES OF THE OCTOBER 29, 1998 WATER POLICY SUBCOMMITTEE MEETING. The motion carried unanimously.

Motion/Vote: MR. SORENSEN MOVED APPROVAL OF THE MINUTES OF THE OCTOBER 29, 1998 GROWTH SUBCOMMITTEE MEETING. The motion carried unanimously.

XIV ADJOURNMENT

There being no further business, the meeting adjourned at 3:45 p.m.

Rep. Vicki Cocchiarella, Co-Chair

Sen. Ken Mesaros, Co-Chair